

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
CLIFTON GIBBON,

Plaintiff,

-against-

CITY OF NEW YORK,

Defendant.  
----- x

**DEFENDANT'S ANSWER**  
**TO THE COMPLAINT**

07 CV 6698 (NRB)

Defendant City of New York ("defendant"), by its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for its Answer to the Complaint, respectfully allege as follows:

1. Deny the allegations set forth in paragraph "1" of the Complaint, except admit that plaintiff purports to proceed as set forth therein.

2. Deny the allegations set forth in paragraph "2" of the Complaint, except admit that plaintiff purports to proceed and invoke the jurisdiction of this Court as set forth therein.

3. Deny the allegations set forth in the paragraph "3" of the Complaint, except admit plaintiff purports to proceed as set forth therein.

4. Deny the allegations set forth in paragraph "4" of the Complaint, except admit that plaintiff purports to proceed as set forth therein.

5. Deny the allegations set forth in paragraph "5" of the Complaint, except admit that venue is properly laid in the Southern District of New York.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" of the Complaint, except admit upon information and

belief that the United States Department of Justice issued a Notice of Right to Sue on July 18, 2007.

7. Deny the allegations set forth in paragraph “9” of the Complaint, except admit that plaintiff was found not qualified for appointment as an Assistant City Highway Repairer (seasonal) on or about March 10, 2006.

8. Deny the allegations set forth in paragraph “8” of the Complaint, except admit that The New York City Department of Transportation (“DOT”) has its offices at 40 Worth Street, New York, New York, and respectfully refer the Court to New York City Charter §§ 2091 and 2093 for a complete and accurate statement of the powers and duties of the DOT.

9. Deny the allegations set forth in the third sentence of paragraph “9” of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first two sentences of paragraph “9” of the Complaint.

10. Deny the allegations as set forth in paragraph “10” of the Complaint, except admit that on or about March 10, 2006, plaintiff was notified that he had been found not qualified for appointment as an Assistant City Highway Repairer (seasonal).

11. Deny the allegations set forth in paragraph “11” of the Complaint.

12. Deny the allegations set forth in paragraph set forth in paragraph “12” of the Complaint.

13. Deny the allegations set forth in paragraph “13” of the Complaint.

14. Deny the allegations set forth in paragraph “14” of the Complaint.

15. Deny the allegations set forth in paragraph “15” of the Complaint.

16. Deny the allegations set forth in paragraph “16” of the Complaint.

17. Deny the allegations set forth in paragraph “17” of the Complaint.

**FOR A FIRST DEFENSE:**

18. The Complaint fails to state a claim upon which relief can be granted.

**FOR A SECOND DEFENSE:**

19. Any allegations pursuant to ADA that are based on conduct that occurred more than 300 days before plaintiff filed his charge of discrimination with the United States Equal Employment Opportunity Commission are time-barred.

**FOR A FOURTH DEFENSE:**

20. This action is barred, in whole and in part, by plaintiff's own culpable or negligent conduct.

**FOR A FIFTH DEFENSE:**

21. Plaintiff has failed to mitigate his damages.

**FOR AN SIXTH DEFENSE:**

22. At all times relevant to the acts alleged in the Complaint, defendant acted in conformity with all applicable laws, rules, and regulations, and any actions taken with respect to plaintiff were for legitimate, nondiscriminatory business reasons.

**FOR AN SEVENTH DEFENSE:**


23. Plaintiff may not recover punitive damages from defendant.

**WHEREFORE**, defendant respectfully requests that this Court enter an order dismissing the Complaint in its entirety, denying all relief requested therein, entering judgment for defendant and granting defendant costs, fees, and disbursements together with such other and further relief as the Court deems just and proper.

Dated: New York, New York  
October 2, 2007

**MICHAEL A. CARDOZO**  
Corporation Counsel of the  
City of New York  
Attorney for Defendant  
100 Church Street, Room 2-143  
New York, New York 10007  
(212) 788-1328

By: \_\_\_\_\_

  
Jason Friedman (JF4755)  
Assistant Corporation Counsel

To: **LAW OFFICE OF SCHWARTZ, LICHTEN & BRIGHT, P.C.**  
Attorney for Plaintiff  
275 Seventh Avenue, 17<sup>th</sup> Floor  
New York, NY 10001  
Att: Stuart Lichten

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SOUTHERN DISTRICT OF NEW YORK

----- X

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Defendant.


----- X

**CERTIFICATE OF SERVICE**

I, **JASON FRIEDMAN**, hereby certify that, on October 2, 2007, I caused a true and correct copy of the foregoing ANSWER to be served by regular mail on the following:

**LAW OFFICE OF SCHWARTZ, LICHTEN & BRIGHT, P.C.**  
Attorney for Plaintiff  
275 Seventh Avenue, 17<sup>th</sup> Floor  
New York, NY 10001  
Att: Stuart Lichten

Dated: New York, New York  
October 2, 2007

  
\_\_\_\_\_  
Jason Friedman (JF4755)  
Assistant Corporation Counsel

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<b>DEFENDANT'S ANSWER TO THE COMPLAINT</b>	
<b>MICHAEL A. CARDOZO</b> <i>Corporation Counsel of the City of New York</i> Attorney for Defendant 100 Church Street, Rm 2-143 New York, N.Y. 10007-2601	
Of Counsel: Jason Friedman Tel: (212) 788-1328	
City No. 2007-	
Due and timely service is hereby admitted.	
New York, N.Y. ...., 200 . . .	
.....	
Attorney for.....	